IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 6990 of 2004

Between:

M. Veera Swamy S/o Nagabhushanam
M/s. Venkata Wines (IL-24 Licence) Podalada,
Razole Mandal, East Godavari District

..... PETITIONER

AND

1 The Commissioner of Proh & Excise Government of A.P., Hyderabad
2 The Deputy Commissioner of Proh & Excise Kakinada Division
East Godavari District
3 The Superintendant of Proh. & Excise Kakinada, East Godavari District.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ order or direction more particularly one in the nature of Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for the records relating to the impugned proceedings of cancellation of IL-24 Licence No. 442/98-99 of the petitioner vide proceedings Rc. No. 97/1999/B2, dated 19-3-1999 served on the petitioner on 17-3-2001 which were confirmed in appeal by the 2nd respondent vide proceedings Rc. No. B1/1896/2003, dated 25-3-2004 and consequently set a side the same and quash the same as the same is illegal, arbitrary and violative of Art. 14 of the Constitution of India and consequently direct the respondents to restore the licence of the petitioner by granting a fresh licence in his favour.

Counsel for the Petitioner: MR.G.V.SHIVAJI

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 6990 of 2004

O R D E R :

Heard Sri G.V. Shivaji, learned counsel appearing for the petitioner and the learned Government Pleader for Prohibition & Excise appearing on behalf of the respondents.

The petitioner, who is proprietor of M/s. Venkata Wines and being holder of IL-24 licence at Podalada, Razole mandal, East Godawari district, filed this Writ Petition, *inter alia,* seeking to assail the orders cancelling the said licence as per the order dated 19.03.1999 by the third respondent herein, as confirmed in appeal by the second respondent as per order dated 25.03.2004, as illegal and quash the same.

The facts leading to filing of this case are that the petitioner was granted IL-24 licence No. 442/98-99 and has been running the business under the name and style 'M/s. Venkata Wines'. However, it is stated that since the petitioner refused to be a party to a syndicate which was sought to be formed by other local liquor licensees, he has been made a target by the other competing licence holders and also the authorities, which has led to filing of present false case against him, and consequently getting the licence cancelled. It is the case of the petitioner that at the instance of the said rival leaders, false case has been booked against him in crime no.22/98-99 on the ground

that he was found to have been selling non-duty paid liquor in pursuance of a false raid alleged to have been conducted on 25.01.1999 in his shop. Immediately thereafter, the petitioner's licence was suspended and further two appeals stood rejected by the authorities concerned and the petitioner had to file Writ Petition No. 22777 of 1999 and as a result of the interim direction granted therein, the petitioner has been running the business. However, when the matter had come up for hearing, it was intimated on behalf of the respondents that the petitioner's licence was cancelled by final orders dated 19.03.1999 though it was not communicated. Therefore, the Writ Petition had to be disposed of as per the orders dated 26.02.2001 directing communication of the said orders of cancellation to the petitioner. Accordingly, the same was communicated as per the proceedings dated 13.03.2001. The appeal filed by the petitioner was dismissed on 08.10.2001 which was successfully challenged in Writ Petition No. 23174 of 2001, which was allowed as per the order dated 28.02.2002 and the matter was remanded for fresh disposal. However, once again, the said appeal was dismissed by the appellate authority as per the order dated 07.05.2002. In the mean while, criminal case in crime no.22/98-99, which was subsequently taken up as C.C. No. 303 of 2000 on the file of the Additional Judicial First Class Magistrate, Razole, was ended in acquittal as per the judgment of the court dated 02.07.2002. Therefore, the petitioner made a representation for restoration of the licence in view of the judgment in the criminal case. Since no orders have been passed thereon, the petitioner had to file Writ Petition No. 15661 of 2002, which was disposed of as per the order dated 10.10.2002 directing the third respondent to consider and pass orders on the said representation in view of the judgment of the criminal court. However, the said representation was rejected on 05.12.2002 by the third respondent herein. Challenging both the orders of cancellation and rejection of representation, appeal was filed before the first respondent mainly contending that there was no proper enquiry and in view of the acquittal in the criminal case, there is no justification for the cancellation, and the same was dismissed by the first respondent

as per order dated 24.05.2003. In Writ Petition No. 11638 of 2003, this Court set aside the orders of cancellation dated 19.03.1999 and also the orders dated 24.05.2003 of first respondent herein dismissing the appeal by petitioner, with a direction to issue notice along with report of the chemical examiner and pass appropriate orders. It is submitted that having regard to the typical facts and circumstances especially in the absence of proper enquiry and acquittal in criminal court, the orders of cancellation are liable to be set aside. However, without properly considering all these aspects, the said appeal was dismissed on 12.12.2003 confirming the cancellation of licence. Challenging the same, the petitioner filed W.P. No. 473 of 2004, which was disposed of on 08.01.2004 directing the petitioner to file appeal. Accordingly, the petitioner filed appeal before the second respondent, which also stood dismissed on 25.03.2004. Hence, this Writ Petition.

The main submission made on behalf of the petitioner is that having regard to the acquittal of the petitioner in the criminal case, which is lodged on the self-same allegations, the petitioner is entitled to the relief on this side also and therefore, there could not have been any cancellation, and further, there being no proper enquiry with due and sufficient opportunity to the petitioner either to substantiate his own case even to cross-examine or rebut. In support, reliance was sought to be placed by the petitioner on the decision of this Court in *R.Yadaiah & another V. Prohibition & Excise Superintendent, Ranga Reddy district, Hyderabad and another*, wherein it was held that licensing authority has to take into consideration the acquittal in the criminal case while cancelling the licence though acquittal is not the decisive factor.

The learned Government Pleader appearing on behalf of the respondents sought to repel the contentions raised on behalf of the petitioner and sustain the impugned orders.

Considering the submissions made more elaborately from both sides and on perusal of the material, it is to be seen as to whether the impugned action of the respondents in cancellation of the licence, is justified in law ?

There is no dispute that the petitioner was holding a licence and the same was sought to be cancelled under the impugned orders by the licensing authority and the same was sought to be confirmed in the appeal. Though an attempt was made by the petitioner to show that because he was not made a party to the syndicate formed by other rival persons, he was made a target, however, there is nothing on record to show that there is any such attempt on the part of the rival persons. Further, the ground on which the petitioner's licence was sought to be cancelled is to the effect that the petitioner was selling unauthorised liquor, which is not only contrary to the provisions of the A.P. Excise Act, but also in the teeth of the Rules made thereunder and the terms and conditions of the licence. Apart from approaching the appellate authorities at different points of time and also this Court under Article 226 of the Constitution of India on more than one occasion, the steering aspect to be noticed is that in the said inspection conducted, nips of N.D.P.L. were seized from the premises of the petitioner on 25.01.1999, which are totally prohibited and they are not supplied by the A.P.B.C.L. On analysis, the report of the chemical examiner holds that they are of sub-standard indian liquor. Nothing serious has been alleged against the seizure of these bottles from the petitioner's shop nor as to the correctness of the findings in the said report. The main attack was on the basis of the acquittal in the criminal case. However, on perusal of the judgment of the Criminal Court, it is seen that the said acquittal is totally basing on the procedural lapses committed by the prosecution especially absence of required search warrant as contemplated under Section 54 of the Act and also non-compliance of the mandate as provided for under Section 100(5) of the Code of Criminal Procedure.

Therefore, it can not be said that there is a clean acquittal on facts. As held by this Court in the aforesaid decision (1 supra), which is relied on by the petitioner, no doubt, it can not be said that the judgment of the criminal court can not be looked into. But it will certainly have a probative value while considering the case for cancellation of licence. Even by placing reliance on the judgment of the criminal court, since there is no finding on the basic facts, it can not be said that the same would in any way come against the cancellation of the licence. In view of the categorical findings as arrived at by the competent authorities as contemplated under the said Act, which is sufficiently based on the report on the technical side of chemical analysis, it can not be said that there is any illegality in the orders of cancellation. In view of the same, it is to be held that the petitioner has failed to make out any case to warrant interference under Article 226 of the Constitution of India. Hence, there are no merits in this Writ Petition.

The Writ Petition is, accordingly, dismissed. No costs.

(B.Prakash Rao, J.)

17.01.2005

DRK

To

1 The Commissioner of Proh & Excise Government of A.P., Hyderabad
2 The Deputy Commissioner of Proh & Excise Kakinada Division
East Godavari District
3 The Superintendent of Proh. & Excise Kakinada, East Godavari District.

4. 2 C.Cs to G.P. for Prohibition and Excise, High Court
buildings, Hyderabad(out)

5. 2 C.D. copies